

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KENNETH A. SIVER, et al.,

11 Plaintiffs,

12 v.

13 CITIMORTGAGE, INC., et al.,

14 Defendants.

CASE NO. C10-1685JLR

ORDER ON MOTION TO
DISMISS

15 This matter comes before the court on Defendant CitiMortgage, Inc.’s
16 (“CitiMortgage”) motion to dismiss (Mot. (Dkt. # 34)) all ten claims of Plaintiffs
17 Kenneth A. Siver and Catriona Siver’s (the “Sivers”) amended complaint (Am. Compl.
18 (Dkt. # 25)). In response, the Sivers voluntarily dismiss their claims for violations of the
19 Real Estate Settlement Procedures Act (“RESPA”), the Fair Debt Collection Practices
20 Act (“FDCPA”), and the Equal Credit Opportunity Act (“ECOA”) (Resp. (Dkt. # 40) at 7
21 and 15), leaving seven claims in dispute. Having considered the submissions of the
22

1 parties, the relevant law, and neither party having requested oral argument, the court
2 GRANTS IN PART and DENIES IN PART CitiMortgage's motion to dismiss.

3 I. BACKGROUND

4 In April 2005, the Sivers purchased their home located at 6105 35th Way
5 Southeast, Auburn, Washington through two loans secured by two purchased money
6 mortgages in favor of Wilshire Financial Service Group HSBC. (Am. Compl. ¶¶ 2-3.)
7 Around July 2007, the Sivers refinanced their original home loans with CitiMortgage,
8 consolidating both loans into one loan. (*Id.* ¶¶ 13-16.) The Sivers executed a promissory
9 note and a deed of trust as security for the \$310,000 loan (the "Loan"), which had an
10 interest rate of 9.750%. (*Id.* ¶¶ 13-18; Mot. at 2.) The Loan documents were signed by
11 the Sivers on July 19 or 20, 2007. (Am. Compl. ¶ 15.) In connection with the Loan, on
12 July 18, 2007, CitiMortgage issued a Truth in Lending ("TIL") disclosure statement to
13 the Sivers, which was signed by the Sivers on July 20, 2007. (*Id.* ¶¶ 21-22.) According
14 to the Sivers, on July 19, 2007, CitiMortgage also provided Mr. Siver and Mrs. Siver
15 each with one copy of the Notice of Right to Cancel. (*Id.* ¶¶ 27, 31.)

16 Almost three years later, on July 13, 2010, the Sivers sent CitiMortgage a letter
17 demanding copies of all loan documentation along with a notice of their desire to rescind
18 the Loan. (*Id.* ¶ 35.) The Sivers were willing to either tender the property of their home
19 to or sign a new promissory note with CitiMortgage. (*Id.* ¶¶ 37-38.) CitiMortgage did not
20 respond to the Sivers' notice to rescind and did not take possession of the Sivers' home.
21 (*Id.* ¶¶ 36, 39.)
22

1 The Sivers filed this lawsuit on October 18, 2010 (Compl. (Dkt. # 1)), amended on
2 February 4, 2011 (Dkt. # 25), alleging claims against CitiMortgage for Truth in Lending
3 Act (“TILA”), FDCPA, RESPA, and ECOA violations; breach of contract; slander of
4 title; fraudulent inducement; and violations of the Washington Consumer Protection Act
5 (“CPA”). (*See generally* Am. Compl.) The Sivers also requested a declaratory judgment
6 and quiet title. (*See generally id.*) CitiMortgage has now filed a motion to dismiss all ten
7 of the Sivers’ claims. (*See generally* Mot.)

8 **II. ANALYSIS**

9 **A. Legal Standard**

10 When considering a motion to dismiss for failure to state a claim under Federal
11 Rule of Civil Procedure 12(b)(6), “the court is to take all well-pleaded factual allegations
12 as true and to draw all reasonable inferences therefrom in favor of the plaintiff.” *Wyer*
13 *Summit P’ship v. Turner Broadcasting Sys., Inc.*, 135 F.3d 658, 663 (9th Cir. 1998).
14 Facts alleged in the complaint are assumed to be true. *See Lipton v. Pathogenesis Corp.*,
15 284 F.3d 1027, 1030 n.1 (9th Cir. 2002). The issue to be resolved on a motion to dismiss
16 is whether the plaintiff is entitled to continue the lawsuit to establish the facts alleged, not
17 whether the plaintiff is likely to succeed on the merits. *See Marksman Partners L.P. v.*
18 *Chantal Pharm. Corp.*, 927 F.Supp. 1297, 1304 (C.D. Cal. 1996).

19 A complaint must provide more than a formulaic recitation of the elements of a
20 cause of action and must assert facts that “raise a right to relief above the speculative
21 level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). The Ninth Circuit has
22 summarized *Twombly*’s plausibility standard to require that a complaint’s

1 “nonconclusory ‘factual content,’ and reasonable inferences from that content, must be
2 plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*,
3 572 F.3d 962, 969 (9th Cir. 2009) (citing *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
4 (2009)). “Threadbare recitals of the elements of a cause of action, supported by mere
5 conclusory statements, do not suffice.” *Iqbal*, 129 S.Ct. at 1949.

6 **B. The Sivers Agree That Multiple Claims Should be Dismissed**

7 The Sivers agree that their claims for violations of RESPA, FDCPA, and ECOA
8 should be dismissed. (Resp. at 7 and 15.) Accordingly, the court dismisses those three
9 causes of action with prejudice.

10 **C. The Sivers’ TILA Actions**

11 The Sivers allege numerous violations of TILA, including that at the closing of the
12 Loan they left without each borrower having received “the requisite two original signed
13 Notices of Right to Cancel with the correct rescission dates and other information ‘filed
14 in.’” (Am. Compl. ¶¶ 69, 74.) As a result of these alleged TILA violations, the Sivers
15 seek damages and to rescind the Loan. (*Id.* ¶¶ 94-96, 101-02.) CitiMortgage responds to
16 these allegations by arguing that (1) the Sivers’ notice of rescission was untimely, (2)
17 CitiMortgage’s TIL disclosures were sufficient, and (3) the Sivers’ TILA claims are
18 barred by the statute of limitations. (Mot. at 7-12.) For the reasons stated below, the
19 court grants CitiMortgage’s motion with respect to the Sivers’ TILA damages claims and
20 grants with leave to amend CitiMortgage’s motion with respect to the Sivers’ TILA
21 rescission claim.
22

1 **i. The Sivers Cannot State a Claim for Damages Under TILA**

2 An action under TILA must be brought “within one year from the date of the
3 occurrence of the violation.” 15 U.S.C. § 1640(e); *see also Silvas v. E*Trade Mortg.*
4 *Corp.*, 514 F.3d 1001, 1007 (9th Cir. 2008) (applying a one-year limitations period for
5 TILA claims). The alleged TILA violations took place on July 19 or 20, 2007, when the
6 Loan documents were executed. (Am. Compl. ¶ 15.) At that time, the Sivers were in full
7 possession of all information relevant to the alleged TILA violations. Thus, the
8 limitations period expired one year later on July 20, 2008, at the latest. The Sivers
9 initiated the present action in October 2010, more than two years after the limitations
10 period expired. (*See* Compl.) Thus, the Sivers’ TILA damages claims are barred by the
11 relevant statute of limitations, and the court dismisses these claims with prejudice. *See*
12 *Meyer v. Ameriquest Mortg. Co.*, 342 F.3d 899, 902-03 (9th Cir. 2003) (affirming
13 summary judgment dismissing a TILA claim as time barred by one-year statute of
14 limitations where at the time the loan documents were signed, the plaintiffs were in full
15 possession of all information relevant to the discovery of a TILA violation).

16 **ii. The Sivers’ TILA Rescission Claim**

17 Under TILA, the borrower is entitled to a right to rescind the transaction for three
18 days, so long as the lender gives the borrower the disclosures required by TILA and two
19 copies of the notice of the right to cancel. 15 U.S.C. § 1635(a). The right to rescind,
20 however, extends for three years (following the execution of the Loan or the delivery of
21 the information required under TILA, whichever is later) if the lender fails to give the
22 borrower the required TILA disclosures and notice. 15 U.S.C. §§ 1635(a) and (f), §

1 1638, and Regulation Z; 12 C.F.R. §§ 226.17 and 226.18. To encourage compliance,
2 TILA violations are measured by a strict liability standard, so even minor or technical
3 violations impose liability on the creditor. *See, e.g., Mars v. Spartanburg Chrysler*
4 *Plymouth, Inc.*, 713 F.2d 65, 67 (4th Cir. 1983) (“To insure that the consumer is
5 protected, as Congress envisioned, requires that the provisions of [the TILA and
6 Regulation Z] be absolutely complied with and strictly enforced.”).

7 Here, the amended complaint contains allegations sufficient to provide for the
8 extended three-year period of time under TILA in which the Sivers could notice their
9 intention to rescind the Loan. The Sivers allege that each borrower (both Mr. Siver and
10 Mrs. Siver) was not provided with two original signed notices of the right to cancel (Am.
11 Compl. ¶¶ 74, 83) as required under TILA.¹ The Sivers also allege that they sent notice
12 of their intent to rescind the Loan on July 13, 2010 (*Id.* ¶ 35). Therefore, assuming the
13 truth of the allegations in the amended complaint, the Sivers’ notice was sent within,
14 albeit barely, three years of execution of the Loan documents, which occurred on July 19
15 or 20, 2007. As a result of the alleged TILA violation the Sivers had three years to act on
16 their right rescind the Loan, and thus, when the Sivers provided notice of their intent to
17 rescind the Loan on July 13, 2010, the notice was timely.

18
19
20 ¹ The Sivers have alleged numerous violations of TILA relating to the documents
21 provided in connection with their Loan. (Am. Compl. ¶¶ 68-96.) CitiMortgage denies that its
22 disclosures were insufficient. (Resp. at 8-9.) CitiMortgage does not, however, deny in its
motion to dismiss that it failed to provide both Mr. Siver and Mrs. Siver with two original signed
notices of the right to cancel. (*See generally* Resp.)

1 CitiMortgage, however, challenges the Sivers' tender of their physical house (or
2 offer to grant a quit claim deed in favor of CitiMortgage) as insufficient for rescission
3 under TILA. (Mot. at 9.) The Sivers' amended complaint states that they are "willing to
4 'tender' the *property* or sign a new promissory note depending on lender's wishes."
5 (Am. Compl. ¶ 38 (emphasis added).) CitiMortgage argues that rescission under TILA
6 requires repayment of the amount of money advanced by the lender, as opposed to the
7 physical property. (Mot. at 10-11.) In response, the Sivers argue that by providing notice
8 of their intent to rescind on July 13, 2010, they had met their obligation under the
9 rescission procedure provided by TILA, shifting the onus to CitiMortgage to take certain
10 required action pursuant to TILA, such as terminating its security interest in the property,
11 before the Sivers would be required to tender any property. (Resp. at 9.) Thus, the
12 parties disagree as to (1) whether the Sivers must tender the amount due on the Loan in
13 the event of rescission (or if tender of the physical home is a sufficient tender under
14 TILA), and (2) the proper procedure for rescission under TILA with respect to such
15 tender.

16 First, it is clear that in the event of rescission, the Sivers cannot merely return the
17 physical property or grant a quit claim deed in the property in favor of CitiMortgage, but
18 instead must tender the amount owed on the Loan, less interest and finances charges.
19 *Yamamoto v. Bank of New York*, 329 F.3d 1167, 1173 (9th Cir. 2003) (discussing that in
20 the event of rescission the borrower would pay back the amount the borrower had
21 received); *Nejo v. Wilshire Credit Corp.*, No. 09cv879 BEN (JMA), 2010 WL 2951972,
22

1 at *1 (S.D. Cal. July 21, 2010) (stating that in the event of rescission the borrower must
2 return the money borrowed.”).

3 Second, the procedural guidelines for rescission of a loan transaction are set forth
4 by TILA, but the order in which these procedures occur may be amended by a court.

5 *Yamamoto*, 329 F.3d at 1171. TILA provides:

6
7 Within 20 days after the receipt of a notice of rescission, the creditor shall
8 return to the obligor any money or property given as earnest money,
9 downpayment, or otherwise, and shall take any action necessary or
10 appropriate to reflect the termination of any security interest created under
11 the transaction. If the creditor has delivered any property to the obligor, the
12 obligor may retain possession of it. Upon the performance of the creditor’s
13 obligations under this section, the obligor shall tender the property to the
14 creditor, except that if return of the property in kind would be impracticable
15 or inequitable, the obligor shall tender its reasonable value.

16
17 15 U.S.C. § 1635(b). The Sivers read 15 U.S.C. § 1635(b) to require a particular
18 order of steps in the event of notice of rescission—namely, that upon notice of
19 rescission the creditor must take action prior to tender by the borrower. (Resp. at
20 9.) To the contrary, courts have long held that 15 U.S.C. § 1635(b) “need not be
21 interpreted literally as always requiring the creditor to remove its security interest
22 prior to the borrowers tender of proceeds.” *Yamamoto*, 329 F.3d at 1171. Indeed,
district courts may “condition rescission on tender by the borrower of the property
he had received from the lender.” *Id.* at 1171 (citations and quotations omitted).

In *Yamamoto*, the Ninth Circuit reasoned as follows:

As rescission under § 1635(b) is an on-going process consisting of a
number of steps, there is no reason why a court that may alter the sequence
of procedures *after* deciding that rescission is warranted, may not do so
before deciding that rescission is warranted when it finds that, assuming

1 grounds for rescission exist, rescission still could not be enforced because
2 the borrower cannot comply with the borrower's rescission obligations no
3 matter what. Such a decision lies within the court's equitable discretion,
4 taking into consideration all the circumstances including the nature of the
5 violations and the borrower's ability to repay the proceeds. If, as was the
6 case here, it is clear from the evidence that the borrower lacks capacity to
7 pay back what she has received (less interest, finance charges, etc.), the
8 court does not lack discretion to do before trial what it could do after.

9 *Id.* at 1173 (emphasis in original).² The discretionary approach called for depends on the
10 record adduced and consideration made on a case-by-case basis. *Id.*

11 Here, neither the amended complaint nor the Sivers' responsive brief assert that
12 the Sivers have tendered or are prepared to tender the amount of the original loan
13 proceeds. CitiMortgage asserts that it does not believe the Sivers can repay the amount
14 owed on the Loan. (Mot. at 11.) Indeed, the Sivers have merely offered to tender the

15 ² Based on *Yamamoto*, many district courts have held that in order to survive a
16 Rule 12(b)(6) motion to dismiss, a claim for rescission must allege or be conditioned on a
17 tender offer by the plaintiff of the amount owed on the loan, less interest and finance
18 charges. See, e.g., *Quintero Family Trust v. OneWest Bank, F.S.B.*, No. 03-55575, 2010
19 WL 392312, at * 4 (S.D. Cal. Jan. 27, 2010) (holding that plaintiffs must allege,
20 consistent with Rule 11, their ability to tender the loan proceeds, in order to state a claim
21 for relief under TILA); *Edelman v. Bank of America Corp.*, No. SACV 09-00309-CJC
22 (MLGx), 2009 WL 1285858 at *2 (C.D. Cal. April 17, 2009) ("A claim for rescission
requires a plaintiff to allege that the plaintiff can or will tender the borrowed funds back
to the lender."); *Garza v. Am. Home Mortg.*, No. CV F 08-1477 LJO GSA, 2009 WL
188604, at *5 (E.D. Cal. Jan. 27, 2009) ("Rescission is an empty remedy without [the
plaintiff's] ability to pay back what she has received (less interest, finance charges,
etc.)"); but see, e.g., *Russell v. Mortg. Solutions Mgmt., Inc.*, Civil No. 08-1092-PK,
2010 WL 3945109 at *4 (D. Or. Oct. 6, 2010) (holding that dismissal at the pleading
stage for failure to allege ability to tender was unnecessary, but acknowledging that
"considerations regarding the adequacy of the pleadings in this respect may come into
play in the summary judgment context). The court, however, does not read *Yamamoto* as
establishing such a blanket rule. Rather, *Yamamoto* stands for the proposition that district
courts, on a case-by-case basis and in the interest of equity, may alter the sequence of
procedures of rescission under TILA. *Yamamoto*, 329 F.3d at 1173.

1 physical property and/or sign a quit claim deed of the property in favor of CitiMortgage.
2 (Am. Compl. ¶ 38.) Moreover, it appears that the Sivers have been behind on Loan
3 payments since September 2008. (Mot. at 2-3.) Based on these facts, the court follows
4 the Ninth Circuit's guidance in *Yamamoto* and exercises its equitable power to require the
5 Sivers to allege an ability to fully tender the amount owed on the Loan. Without such an
6 allegation in this case, the amended complaint fails to state a claim for rescission relief
7 under TILA. Accordingly, the Sivers' rescission claim is dismissed without prejudice.
8 The Sivers are granted leave to amend their amended complaint to allege their ability to
9 tender the entire amount owed on the Loan (less interest paid and fees earned), subject to
10 the requirements of Rule 11(b) of the Federal Rules of Civil Procedure.

11 If the Sivers re-assert their right to rescission under § 1635(b) of TILA in a future
12 complaint, they will be required to satisfy the court of their ability to repay the loan
13 proceeds before the parties and the court go through the expensive exercise of motion
14 practice and a trial on the merits. *See Yamamoto*, 329 F.3d at 1173 (holding in part that
15 court had discretion to demand assurance of plaintiff's ability to repay loan proceeds
16 before going through the empty (and expensive) exercise of a trial).

17 **D. The Sivers' Declaratory Judgment Claim**

18 Because the Sivers' declaratory judgment claim is entirely dependent on their
19 TILA rescission claim, this claim is also dismissed with leave to amend.

20 **E. The Sivers Have Failed to State a Claim for Breach of Contract**

21 The Sivers' amended complaint alleges that CitiMortgage breached their loan
22 agreement when CitiMortgage took no action in response to the Sivers' notice of intent to

1 rescind. (Compl. ¶¶ 51, 52.) The Sivers’ “breach-of-contract” claim references a duty
2 under TILA, rather than any contract or any contract provision. Indeed, the Sivers do not
3 identify any contract or contract provision that CitiMortgage has breached. Moreover,
4 the Sivers offered absolutely no response to CitiMortgage’s motion to dismiss their
5 breach-of-contract claim, which the court construes as an admission that the motion has
6 merit. *See* W.D. Wash. Local Rule CR 7(b)(2). Accordingly, the court dismisses the
7 Sivers’ breach-of-contract claim with leave to amend.

8 **F. The Sivers have Failed to State a Claim for Quiet Title**

9 A quiet title claim against a mortgagee requires an allegation that the mortgagor is
10 the rightful owner of the property, that is, that the mortgagor has paid an outstanding debt
11 secured by the mortgage. *See Kelley v. MERS, Inc.*, 642 F. Supp. 2d 1048, 1057 (N.D.
12 Cal. 2009). The Sivers do not contend that they have paid the debt owed on the Loan.
13 Instead, it is clear the Loan has an outstanding balance owed by the Sivers to
14 CitiMortgage. (*See* Am. Compl. ¶¶ 104-15.) Thus, the Sivers cannot bring a claim for
15 quiet title, and the court dismisses the Sivers’ quiet title claim with prejudice.

16 **G. The Sivers Have Failed to State a Claim for Slander of Title**

17 A slander of title action requires: (1) a publication of a false statement disparaging
18 the claimant’s title, (2) the statement must be maliciously published, (3) the statement
19 must be spoken with reference to some pending sale or purchase of the plaintiff’s
20 property, (4) the plaintiff must suffer pecuniary loss as a result of the false statement, and
21 (5) the statement must be such as to defeat the plaintiff’s title. *Rorvig v. Douglas*, 873
22 P.2d 492, 496 (Wash. 1994).

1 Here, there has been no allegation of a false statement. The Sivers only allegation
2 is that CitiMortgage has failed to remove its deed of trust from the property. Moreover,
3 the Sivers have not experienced a pecuniary loss, as they remain on the property. Thus,
4 the Sivers cannot bring a claim for slander of title, and the court dismisses the Sivers'
5 slander of title claim with prejudice.

6 **H. The Sivers Have Failed to State a CPA Claim**

7 There are five elements of a private CPA claim: “(1) an unfair or deceptive act or
8 practice; (2) which occurs in trade or commerce; (3) that impacts the public interest; (4)
9 which causes injury to the plaintiff in his or her business or property; and (5) which
10 injury is causally linked to the unfair or deceptive act.” *Wash. State Physicians Ins.*
11 *Exch. & Ass’n v. Fisons Corp.*, 858 P.2d 1054, 1061 (Wash. 1993) (citation omitted).

12 CitiMortgage argues that the Sivers’ CPA claim fails to state a claim upon which
13 relief can be granted because the Sivers failed to allege facts regarding any unfair or
14 deceptive act or practice of CitiMortgage or any public interest impact. (Mot. at 15-17.)

15 The court agrees with CitiMortgage that the Sivers, in their amended complaint,
16 have entirely failed to allege any unfair or deceptive act of CitiMortgage or any public
17 impact. (*See* Am. Compl. ¶¶ 159-62.) Further, the court can discover no allegation
18 regarding the Sivers’ injury. Additionally, the Sivers have only alleged that
19 CitiMortgage’s alleged TILA violations are “capable of being repeated.” (Resp. at 15.)
20 Such speculative allegations, without factual basis, are precisely the type of allegations
21 that are insufficient to continue a lawsuit in response to a motion to dismiss. *Twombly*,
22

1 550 U.S. at 545. Thus, the Sivers have failed to state a CPA claim, and the court
2 dismisses this claim with leave to amend.

3 **I. The Sivers Have Failed to Plead Fraudulent Inducement with Particularity**

4 Federal Rule of Civil Procedure 9(b)'s heightened pleading standard for claims
5 sounding in fraud requires a plaintiff to plead the "who, what, when, where, and how" of
6 the alleged fraud. *See Yess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 2006 (9th Cir.
7 2003).

8 The Sivers' amended complaint includes a cause of action for "Fraudulent
9 Inducement and Concealment" which is supported by a single paragraph stating that
10 "[t]he acts of defendant as described above amount to fraudulent inducement and
11 concealment." (Am. Compl. ¶ 157.)

12 According to CitiMortgage, these allegations lack the specificity required under
13 Federal Rule of Civil Procedure 9(b). (Mot. at 15.) The court agrees. Clearly, one
14 conclusory allegation fails to meet the "who, what, when, where, and how" requirements
15 to properly allege fraud with specificity. *See Fed. R. Civ. P. 9(b)*.

16 Even were the court to consider the facts alleged in the Sivers' amended complaint
17 without Rule 9(b)'s heightened pleading standard, the allegations still fail to allege the
18 basic elements of fraud. The Sivers have not identified a false statement that they relied
19 upon to their detriment or any damages resulting from that reliance. *See Baertschi v.*
20 *Jordan*, 413 P.2d 657, 660 (Wash. 1966) (setting out nine elements of a fraud claim,
21 which include a representation of a false material fact and damages resulting from the
22 plaintiff's reliance upon that representation). The Sivers only allege that CitiMortgage

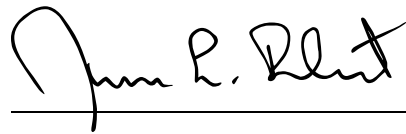
1 failed to provide the necessary disclosures required under TILA, not that any of the
2 disclosures were materially false. Additionally, as stated above, the Sivers remain in the
3 property, and therefore they have not suffered any damages, as required to plead or prove
4 fraud. Accordingly, the court dismisses the Sivers' fraud claim with leave to amend.

5 **III. CONCLUSION**

6 CitiMortgage's motion to dismiss is hereby GRANTED with respect to the Sivers'
7 RESPA, FDCPA, ECOA, quiet title, and slander of title claims. Similarly, CitiMortgage's
8 motion to dismiss is GRANTED with respect to the Sivers' damages claims for violations
9 of TILA. The Sivers' claims for breach of contract, CPA, fraudulent inducement,
10 rescission under TILA, and declaratory judgment are DISMISSED WITH LEAVE TO
11 AMEND. As set forth in this order, if the Sivers choose to file a second amended
12 complaint for rescission under TILA, they must include an allegation setting forth their
13 ability to tender the entire loan amount (less payments made) and subject to the
14 requirements of Rule 11(b) of the Federal Rules of Civil Procedure. In the event the
15 Sivers choose to re-assert a right to rescission under § 1635(b) of TILA, they will be
16 required to satisfy the Court that they are able to repay the loan proceeds before the
17 parties and the court go through the expensive exercise of motion practice and a trial on
18 the merits.

1 Plaintiff shall file a second amended complaint, if at all, within 14 days of the date
2 of this Order.

3 Dated this 11th day of November, 2011.

4
5 

6 The Honorable James L. Robart
7 U.S. District Court Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22